EXHIBIT 3

WRITTEN STATEMENT OF

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HEARING ON

"THE WORLDCOM CASE: LOOKING AT BANKRUPTCY AND COMPETITION ISSUES"

BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

JULY 22, 2003

Biographical Background

My name is Marcia L. Goldstein. I currently serve as bankruptcy counsel for MCI in its chapter 11 case. I am a partner and co-head of the Business Finance and Restructuring Department of Weil, Gotshal & Manges LLP, which is the largest bankruptcy and reorganization practice in the country. During my nearly 28 years at Weil, Gotshal & Manges, I and others in my group have represented numerous debtors in chapter 11 cases, as well as financial institutions with significant claims in such cases.

I am on the Advisory Board of Colliers Bankruptcy, 15th Ed., have been a Visiting Lecturer in Bankruptcy at Yale Law School, am a member of the National Bankruptcy Conference and the American College of Bankruptcy. I have served as the Chair of the Committee on Bankruptcy and Corporate Reorganization of the Association of the Bar of the City of New York.

Issues Under Consideration

Two questions which have been raised by certain competitors of MCI, particularly Verizon, are the subject of this hearing:

> First, whether a chapter 11 debtor, such as MCI, which has engaged in pre-filing fraud or misconduct, should be denied an opportunity to reorganize under chapter 11 of the United States Bankruptcy Code; and
>
> Second, whether a reorganization of MCI under chapter 11 would confer on it an unfair competitive advantage.

The answer to both of those questions is: No. To answer otherwise would be in direct conflict with the underlying policies and premises of the federal bankruptcy laws and long standing judicial precedent and practice.

The Purpose of Chapter 11: Rehabilitation of the Debtor

The federal bankruptcy laws foster the balancing of two goals: the equitable distribution of a troubled company's assets through the equal sharing of losses by creditors of equal rank, and the restructuring or rehabilitation of a business to preserve jobs and to maximize the return to creditors and, if possible, other stakeholders of the debtor. Thus, the federal bankruptcy laws prevent creditors from dismembering the assets of a debtor, while providing the opportunity for a fresh start. At the heart of these goals stands the basic premise of bankruptcy policy that when the "going-concern value" of an enterprise exceeds the "liquidation value" of the enterprise, reorganization of the debtor will maximize return to creditors and lead to the preservation of the enterprise for the greater good. Congress has recognized this fundamental premise. As Senator Hatch has observed,

> Chapter 11's overriding purpose is to take whatever steps are expedient to preserve the failing business for the benefit of all if possible.

130 Cong. Rec. S 8892 (daily ed. June 29, 1984) (remarks of Sen. Hatch). And the Supreme Court has confirmed that

> [b]y permitting reorganization, Congress anticipated that the business could continue to provide jobs, to satisfy creditors' claims, and to produce a return for its owners. H.R. Rep. No. 95-595, p.220 (1977).

United States v. Whiting Pools, Inc., 462 U.S. 198, 203 (1982). Accordingly, one of the criteria for confirmation of a plan of reorganization under chapter 11 of the Bankruptcy Code (11 U.S.C. § 101 et seq.) is that the plan satisfy the so-called "best interests test,"

which requires that each holder of an impaired claim or equity interest either accepts the plan, or will receive or retain under the plan property of a value that is not less than the value such party would receive or retain if the debtor were to be liquidated under chapter 7 of the Bankruptcy Code. *See* 11 U.S.C. § 1129(a)(7).

Thus, in its effort to enable a debtor to rehabilitate its business and continue to operate post-chapter 11, Congress designed the Bankruptcy Code expressly to afford the debtor a "fresh start." And while we currently operate under the Bankruptcy Code of 1978, this basic premise has been part of the fabric of this country's bankruptcy laws, and our national economy, for almost two centuries. As the Second Circuit Court of Appeals has stated, "Congress made it a central purpose of the bankruptcy code to give debtors a fresh start in life and a clear field for future effort unburdened by the existence of old debts." *In re Bogdanovich*, 292 F.3d 104, 107 (2d Cir. 2002).

To this end, chapter 11 of the Bankruptcy Code provides a financially troubled business with an opportunity to restructure its balance sheet and its business affairs, and includes an array of provisions designed to promote this result:

- First and foremost, upon the filing of a petition for relief, the automatic stay instantly and automatically stops all actions and proceedings against the debtor to enforce or collect on a pre-chapter 11 obligation. The automatic stay affords the debtor breathing room from creditors and creates an opportunity for negotiation with parties in interest. 11 U.S.C. § 362.

- Section 364 of the Bankruptcy Code provides the parameters whereby the debtor may obtain liquidity in the form of "new" money through debtor-in-possession financing. 11 U.S.C. § 364.

- The debtor may relieve itself of burdensome contracts through the rejection process. Conversely, if the debtor has contracts it deems valuable but is unable to utilize, the debtor may often assign such contracts to third parties willing pay the debtor for them, even if the contract prohibits assignment. 11 U.S.C. § 365.

- Under the Bankruptcy Code pre-chapter 11 fraudulent and preferential transfers may be "avoided" and the proceeds thereof recovered for distribution to creditors. 11 U.S.C. §§ 547, 548, 550.

The comprehensive scheme embodied in chapter 11 balances the rehabilitative policies with creditors protections:

- Through the claims reconciliation process, creditors of the debtor are afforded a forum for their claims to be asserted, contested, and resolved. 11 U.S.C. § 502, Fed. R. Bankr. P. 3007.

- Non-ordinary course transactions must be on notice to creditors, who may object and be heard by the bankruptcy court. 11 U.S.C. § 363.

- The Bankruptcy Code sets forth certain mandatory provisions for a plan of reorganization. 11 U.S.C. § 1123(a).

- Holders of claims and interests are provided with a disclosure statement which contains adequate information of a kind and in sufficient detail to enable hypothetical, reasonable investors typical of a debtor's creditors to make an informed judgment whether to accept or reject a proposed chapter 11 plan. 11 U.S.C. § 1125.

- Holders whose claims or interests are impaired by distributions under the proposed chapter 11 plan are entitled to vote whether to accept or reject it. 11 U.S.C. § 1126.

In this manner, the Bankruptcy Code seeks "to avert the evils of liquidation," provide a fresh start for the debtor, and promote for the prompt and efficient administration and settlement of the chapter 11 estate that maximizes the return to creditors.

Conversely, punishing a debtor for its failure to pay debts or for its prepetition actions – even fraud or other misconduct – by mandating liquidation – is antithetical to the chapter 11 construct. The bankruptcy laws promote rehabilitative, not punitive goals. And, even in the case of criminal conduct, the statutory scheme developed by Congress relies on traditional arms of the state and federal governments to exact the appropriate punishment of culpable parties. Indeed, with the enactment of the

Bankruptcy Code in 1978, the Securities and Exchange Commission's role in bankruptcy was dramatically reduced in recognition that the SEC's policing of fraud and other securities violations pursuant to its enforcement powers diminished the need for the SEC's involvement in the chapter 11 process. Clearly, Congress believed that anti-fraud policies are best addressed by the securities laws and enforced by the SEC rather than the bankruptcy courts.

MCI's Chapter 11 Filing

How do these premises apply to MCI? The announcement of accounting improprieties last June created an immediate liquidity crisis for MCI as all sources of financing and capital were cut off. MCI turned to chapter 11 in order preserve value for its creditors. Chapter 11 was the only alternative which enabled MCI to obtain financing and the much needed breathing room to develop and implement its business plan, revive its operations, cooperate with the Securities and Exchange Commission with respect to the rectification of and punishment for its prepetition securities law violations, and propose a plan of reorganization that is supported by creditors holding 90% of the company's indebtedness. In this manner, MCI is a classic example of a company moving toward a consensual reorganization and the rehabilitation that the bankruptcy laws were designed to foster.

Concurrently, the traditional arms of the federal government have continued to investigate and indict the culpable individuals responsible for the pre-chapter 11 accounting fraud at MCI. MCI has and will continue to cooperate with these investigations. In addition, the Securities and Exchange Commission commenced an enforcement action immediately upon MCI's disclosure of accounting irregularities and

in the context of that action, MCI consented to the entry of a permanent injunction regarding the company's future conduct and compliance with securities laws. MCI has also consented to a $2.25 billion penalty judgment as a resolution of the SEC action. When its reorganization plan becomes effective, MCI will pay $500 million in cash and $250 million in stock in satisfaction of the penalty judgment. It is the largest fine in corporate history and it has been approved by the United States District Court for the Southern District of New York, the court presiding over the SEC action against MCI.

MCI has not only sought to restructure its balance sheet and reshape its business, but it has also sought to re-invent itself in many ways.

- MCI consented to the appointment of a corporate monitor to oversee certain aspects of the company's business practices, including the review and reformulation of the company's corporate governance procedures;

- MCI has "cleaned house" of the culpable individuals, fired or accepted the resignation of every employee accused of participation in the fraud by the board's special investigative committee or the bankruptcy examiner, and even those employees who, while not accused of personal misconduct, are alleged to have been insufficiently attentive in preventing fraud. All of these actions have been designed to put the company on a new a positive footing – led by a new board of directors, new chief executive officer, and new senior managers;

- MCI has not only cooperated with the corporate monitor, the Examiner appointed in the chapter 11 case, the SEC, the Department of Justice, the United States Attorneys' office for the Southern District of New York, and other investigative bodies, but has sought to become a model of corporate governance and internal compliance. In furtherance thereof, MCI created an ethics office that has revamped corporate ethics standards and a mandatory educational program to reinforce such standards.

The Verizon Theory

The view that MCI should not be permitted to reorganize under the Bankruptcy Code but should be subject to a forced sale under chapter 7 is espoused primarily by MCI's competitors, notably Verizon. Under the "Verizon Theory," MCI should be liquidated to prevent it from benefiting from its prepetition fraud. The Verizon Theory, however, not only completely ignores the fundamental principles of chapter 11, but also the realities of who the stakeholders are in the MCI chapter 11 case.

Relief Under Chapter 11 is Not Denied to Debtors Based Upon Prepetition Fraudulent Conduct

Nothing in the Bankruptcy Code prohibits an entity that engaged in prepetition fraudulent conduct from seeking rehabilitation under chapter 11 or requires the liquidation of such companies. There are a number of examples of companies which engaged in prepetition misconduct or fraud, or violations of the security laws, that have successfully reorganized under the Bankruptcy Code, including Sunbeam, Inc. and Leslie Faye, Inc. Other recent chapter 11 cases demonstrate how market regulators, law enforcement agencies, and bankruptcy courts can respond in harmony when culpable individuals engage in fraudulent misconduct at the expense of creditors and public security holders. The facts and circumstances of MCI's chapter 11 case are no different. If the Verizon point of view is accepted, no such entity would be or would have been permitted to reorganize under chapter 11.

Rather, in cases in which debtors have engaged in prepetition misconduct, the initial stages of a reorganization case provide the context for the removal of culpable individuals and/or other remediation. Since the filing of its chapter 11 cases, MCI has

totally revamped its management, board of directors and corporate governance practices. In fact, had MCI not "cleaned house" or remediated its prepetition improper conduct, liquidation would still not be the appropriate remedy. Rather, pursuant to section 1104 of the Bankruptcy Code, the Bankruptcy Court could direct the appointment of a trustee to replace management and conduct appropriate investigations. Given the company's voluntary replacement of its senior management and board of directors, and its consent, at the outset of its chapter 11 case, to the appointment of an examiner to investigate areas of prepetition misconduct, the drastic remedy of a trustee was not necessary. For these reasons, among others, when certain creditors of MCI filed a motion seeking the appointment of a trustee, the Bankruptcy Court denied such request. *See In re WorldCom, Inc.*, No. 02-13533 (AJG) (Bankr. S.D.N.Y. May 16, 2003) (Memorandum Decision and Order Denying Motions for Appointment of a Chapter 11 Trustee and Examiner).

District Judge Jed Rakoff of the Southern District of New York, who presides over the SEC enforcement action against MCI, responded to competitors' suggestions that denying access to reorganization under chapter 11 and requiring a forced sale under chapter 7 should be additional punishment for MCI. In approving the proposed $750 million SEC settlement, Judge Rakoff observed that liquidation

> would undercut the basic tenets of bankruptcy reorganization, a unique innovation of United States bankruptcy law that has contributed materially to the conservation of economic resources and the stability of the U.S. economy.

Securities and Exchange Commission v. WorldCom, Inc., No. 02 Civ. 4963 (JSR), slip op. at 8 (S.D.N.Y. June 7, 2003). Recognizing the inherent conflict between the

rehabilitative purposes of chapter 11 and the liquidation of the company, Judge Rakoff commented that:

> To kill the company . . . would unfairly penalize its 50,000 innocent employees, remove a major competitor from a market that involved significant barriers to entry, and set at naught the company's extraordinary efforts to become a model corporate citizen. It would also unfairly impact creditors, over 90 percent of whom have stated their support for the company's plan of reorganization in recognition that it affords them far more value than liquidation.

Id. In these circumstances, and particularly in view of the policy aims of the Bankruptcy Code, the liquidation or a forced sale of MCI, an enterprise on the cusp of completing its reorganization, can serve no legitimate purpose.

The Verizon Theory: Of Trucks and Truck Drivers

On several occasions, the proponents of the Verizon Theory have expressed their view that when a business expands operations through the use of inappropriate means and acquires new customers or additional assets, that business, with its allegedly fraudulently acquired assets, should be removed from the marketplace and sold for the benefit of its competitors.

The Verizon Theory neglects the very heart of the policy goals of equitable distribution underlying the Bankruptcy Code. The expansion of MCI's operations was funded by its creditors, not its competitors. It was these creditors who financed the acquisition of the assets that enabled MCI's growth. These creditors are among the victims of the prepetition accounting fraud and are entitled to recover on account of their losses to the maximum extent possible. Although a sale of MCI's assets could occur in chapter 11 under circumstances where creditors elect this alternative in lieu of a stand-alone reorganization, MCI has received no proposal from its creditors

along these lines, and, to the contrary, has received overwhelming creditor support for its proposed plan of reorganization. Where the going-concern value of the enterprise exceeds the liquidation value, as is true in MCI's case, the liquidation of the enterprise is not an appropriate remedy.

Although the proponents of the Verizon Theory assert that liquidation of the assets acquired through fraudulent means is the only way to afford the so-called injured competitor with recourse, an "injured" party is only entitled to damages where it has demonstrated a sustainable cause of action for its alleged injury and has established that the injury was in fact caused by the party charged. Competitors have put forth no sustainable causes of action along these lines.

Contrary to the premise of the Verizon Theory, a chapter 7 sale would not yield a fair result to either MCI's employees or its creditors. A mandatory chapter 7 liquidation of MCI would result in a forced sale of assets at a depressed price. Only a handful of MCI's competitors would have the wherewithal to bid and such competitors, including Verizon, would be the only beneficiaries of such a forced sale. Nonetheless, these competitors suggest that creditors would receive a fair price in such a "going concern liquidation" of MCI. This ignores the realities of chapter 7. In fact, creditors would recover significantly less than the recoveries provided for in the reorganization plan that has been filed in the Bankruptcy Court. Conversion to chapter 7 would result in a default in MCI's available DIP financing with the result that existing trade credit would dissipate, new business opportunities would disappear, customers would be unnerved and the business stability achieved by MCI since its chapter 11 filing would be immediately undermined, with a resulting deterioration in value. A forced sale in such conditions –

where creditors would have no vote – as they would in chapter 11 – would benefit only MCI's competitors, who would bid for MCI's business at a distressed value and eliminate it as an additional competitor. This is antithetical to the fundamental premise of US bankruptcy law.

The proponents of the Verizon Theory also espouse the view that MCI's employees would not be affected by a "going-concern liquidation" of the company. Again the Verizon Theory ignores reality. Many MCI jobs would be eliminated if the company were sold to a competitor in a forced sale. This is a natural result of consolidation. It is generally accepted that the reorganization of a debtor is the best way to preserve the employment of the debtor's employees. Indeed, the employees are best served by enabling them to have the opportunity to realize the benefits of the successful reorganization of the debtor. In addition, injured stockholders of MCI – many of whom are or were employees – will receive compensation, including stock, from reorganized MCI through the SEC Settlement and the Sarbanes-Oxley compensation fund. The liquidation of MCI in chapter 7 would result in the subordination of the SEC penalty and no opportunity for recovery to injured stockholders.

Our federal bankruptcy laws favor rehabilitation of the enterprise and the maximization of creditor value. These laws are not driven by the interests of a debtor's competitors, such as Verizon. Chapter 11 reorganization would have little purpose if competitor "interests" were a consideration. This consideration is neither a part of the formula, nor should it be. As the Supreme Court has observed,

> The Bankruptcy Code does not authorize free-wheeling consideration of every conceivable equity, but rather only how the equities relate to the success of the reorganization.

N.L.R.B. v. Bildisco & Bildisco, 465 U.S. 513, 527 (1984).

Competitive Balance Concerns

Verizon and others have expressed concern that MCI will emerge from chapter 11 with a reduced debt load and therefore a competitive advantage. They assert that reorganized MCI will be positioned to engage in predatory pricing practices and, thus, destabilize the telecommunications industry. Such concerns are misplaced. The proposed debt level for reorganized MCI, approximately $5.5 billion, which will represent about 41% of the post-bankruptcy value of the company. In contrast, Verizon's debt represents only 30% of the value of its company. We don't believe that this is a relevant measure for determining the ability to compete in a market but, if there is any competitive advantage to be had, it clearly falls to Verizon. .

Moreover, as Judge Rakoff observed, these arguments of unfair advantage should be disregarded. The Verizon Theory ignores that, while corporate reorganization under chapter 11 may confer upon the debtor an advantage in the terms of reducing pre-chapter 11 debt, companies seek bankruptcy protection as a last resort because chapter 11 involves significant competitive disadvantages due to negative publicity and customer hesitation. It is common for a debtor's competitors to try to eliminate an entity while in chapter 11 and when it emerges. The repeat filings of certain chapter 11 debtors is testimony to the difficult competitive marketplace a debtor will face following emergence from chapter 11 protection. In fact, during MCI's chapter 11 case – while it has had no pre-chapter 11 debt service requirements at all – it has been MCI's competitors (not MCI) that have engaged in competitive pricing strategies, and in that environment, MCI was forced to lower its prices and reduce its future EBITDA projections.

Despite Verizon's characterization, competitors of MCI are not the victims of the accounting irregularities. Rather, the victims in this matter are the creditors and shareholders who lost billions of dollars. Having suffered such losses, creditors of MCI have relied upon the provisions of the Bankruptcy Code to enforce their claims to obtain the maximum value possible. The creditors of MCI will be the new owners of a reorganized MCI. If chapter 11 could not be utilized to implement this result, it is not the culpable individuals who would be punished; neither is it MCI that would be punished. Rather, it is the creditors of MCI who would be punished. In fact, creditors would be penalized twice: once by losses resulting from MCI's pre-chapter 11 improprieties and financial distress and again by denying the normal operation of the Bankruptcy Code. While the credit markets have already adjusted expectations in light of the former, the latter could prove more destabilizing – not just for MCI creditors, but for the chapter 11 process in general. The impact on financial markets and the availability of credit could be significantly impaired. As Congress noted in the legislative history of the Bankruptcy Code:

> A corporation which is taken over by its creditors through a plan of reorganization will not continue to be liable for [obligations] arising from the corporation's prepetition fraud . . . since the creditors who take over the reorganized company should not bear the burden of acts for which the creditors were not at fault.

S. Rep. 95-989, at 130 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5915. This is the basis for section 510 of the Bankruptcy Code, which requires subordination of securities fraud claims to the claims of other creditors and explains why claims arising from fraud are discharged in corporate bankruptcies.

The hearing before the bankruptcy court to consider MCI's plan of reorganization is scheduled to commence on August 25th. MCI will have to establish, to the satisfaction of the Bankruptcy Court, that its plan has met all statutory requirements. It is the protections and the benefits of chapter 11 that have enabled MCI to take the steps to emerge as a rehabilitated enterprise that has regained the confidence of its creditors, customers, and employees. The context in which MCI "cleaned house," settled with the SEC, developed a business plan and negotiated a plan of reorganization with its major creditor constituents is the product of balanced federal bankruptcy law. It should be commended, not punished or otherwise denied.

Thank you for the opportunity to be heard on the matters before this Committee today.